

21 C.J.S. Courts § 122

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Courts

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III. Creation and Constitution; Officers of Courts

B. Nonjudicial Officers and Employees Generally; Interpreters

1. General Considerations

§ 122. Court attendants and assistants

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West's Key Number Digest

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Generally, courts have the authority to appoint and supervise court attendants and assistants.

Court attendants are not officers,¹ county officers,² or constitutional officers.³ They are ordinarily considered to be mere employees,⁴ or attaches,⁵ although in some courts certain attendants, such as bailiffs, have been held to be officers of the court.⁶

Where authorized by statute, courts may appoint court attendants or assistants,⁷ although according to some authorities, the power to select judicial assistants is an inherent corollary of the judicial power itself.⁸

Where a statute vests the appointive power in an official other than the judge, such enactment controls.⁹ However, under particular statutory regulations, the court may have the power to recommend a person for the appointment,¹⁰ or may determine the number of attendants,¹¹ or may require the appointment of as many as are necessary.¹² Moreover, a court may appoint attendants when a peculiar emergency demands or where the agency vested by law with the power of appointment neglects or refuses to perform its duty.¹³

Court attendants are subject to the control and supervision of the court,¹⁴ which is ultimately responsible for their actions or inactions.¹⁵ Attendants and assistants must act in accordance with the judge's direction¹⁶ regardless of the instructions of any other person.¹⁷ A court attendant may be prohibited from engaging in political activity.¹⁸

Duties.

A bailiff is responsible for preserving order and decorum;¹⁹ taking charge of, or guarding, the jury;²⁰ guarding prisoners;²¹ and other services which are reasonably necessary for the court's proper functioning.²² Court reporter's statutory duty to record proceedings verbatim requires reporter to record what transpires as accurately as possible.²³

Liability.

A court attendant may be held accountable in a civil suit for damages resulting from negligence in the performance of his or her legal duties.²⁴

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Footnotes

- 1 Ohio—*State ex rel. Hile v. Zangerle*, 115 Ohio St. 32, 151 N.E. 769 (1926).
- 2 Ga.—*Strickland v. Houston*, 173 Ga. 615, 161 S.E. 262 (1931).
- 3 U.S.—*U.S. v. McCabe*, 129 F. 708 (C.C.A. 1st Cir. 1904).
- 4 Pa.—*Werkman v. Westmoreland County*, 128 Pa. Super. 297, 194 A. 344 (1937).
- 5 Cal.—*Los Angeles County Employees Ass'n, SEIU, Local 660 v. Superior Court*, 81 Cal. App. 4th 164, 96 Cal. Rptr. 2d 418 (2d Dist. 2000).
- 6 Ala.—*Fuller v. State*, 365 So. 2d 1010 (Ala. Crim. App. 1978), writ denied, 365 So. 2d 1013 (Ala. 1979).

W. Va.—*In re Pauley*, 173 W. Va. 228, 314 S.E.2d 391 (1983).

7 Pa.—*Werkman v. Westmoreland County*, 128 Pa. Super. 297, 194 A. 344 (1937).

8 Pa.—*L.J.S. v. State Ethics Com'n*, 744 A.2d 798 (Pa. Commw. Ct. 2000).

Nonjudicial assistants

Judges can have assistants who are not themselves judges, and those assistants may advise and assist the real judge.

U.S.—*In re Judicial Misconduct*, 752 F.3d 1204 (9th Cir. 2014).

9 Minn.—*State ex rel. Bozicevich v. City of Eveleth*, 194 Minn. 44, 260 N.W. 223 (1935).

10 N.Y.—*Hansmann v. Thomas*, 134 Misc. 75, 234 N.Y.S. 581 (Sup 1929).

11 Ariz.—*Merrill v. Phelps*, 52 Ariz. 526, 84 P.2d 74 (1938).

N.Y.—*Hansmann v. Thomas*, 134 Misc. 75, 234 N.Y.S. 581 (Sup 1929).

12 Ariz.—*Merrill v. Phelps*, 52 Ariz. 526, 84 P.2d 74 (1938).

13 Idaho—*State v. Leavitt*, 44 Idaho 739, 260 P. 164 (1927).

14 Ill.—*People v. Davis*, 105 Ill. App. 3d 549, 61 Ill. Dec. 48, 433 N.E.2d 1376 (4th Dist. 1982).

W. Va.—*In re Pauley*, 173 W. Va. 228, 314 S.E.2d 391 (1983).

15 Ill.—*People v. Davis*, 105 Ill. App. 3d 549, 61 Ill. Dec. 48, 433 N.E.2d 1376 (4th Dist. 1982).

16 Ariz.—*Merrill v. Phelps*, 52 Ariz. 526, 84 P.2d 74 (1938).

Delivering incarcerated person

When a judicial officer lawfully orders a bailiff to deliver up an incarcerated person, it is the bailiff's duty to comply unless restrained by a higher judicial authority.

W. Va.—*In re Pauley*, 173 W. Va. 228, 314 S.E.2d 391 (1983).

17 Ariz.—*Merrill v. Phelps*, 52 Ariz. 526, 84 P.2d 74 (1938).

18 N.J.—*Matter of Randolph*, 101 N.J. 425, 502 A.2d 533 (1986).

Pa.—*In re Dobson*, 517 Pa. 19, 534 A.2d 460, 43 Ed. Law Rep. 712 (1987).

19 W. Va.—*State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 507 S.E.2d 376 (1998).

20 W. Va.—*State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 507 S.E.2d 376 (1998).

Duration of duty

The bailiff's duty to guard the jury during deliberations commenced when he was sworn by the court and continued until the jury reached a verdict.

Minn.—*State v. Jurek*, 376 N.W.2d 233 (Minn. Ct. App. 1985).

21 W. Va.—*State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 507 S.E.2d 376 (1998).

22 W. Va.—*State ex rel. Farley v. Spaulding*, 203 W. Va. 275, 507 S.E.2d 376 (1998).

23 U.S.—*A Just Cause v. United States*, 45 F. Supp. 3d 1258 (D. Colo. 2014).

Fla.—*Perez v. State*, 980 So. 2d 1205 (Fla. 3d DCA 2008).

24 N.J.—*Charlton v. Mitchell*, 121 N.J.L. 285, 2 A.2d 367 (N.J. Sup. Ct. 1938).

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